The Politics of State Formation:

Statehood as an Expression of Power

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Abstract

The purpose of this paper is to examine the ways in which power not only manifests itself in the politics of statehood, but also defines what it is to be a state. The role of power can either be supportive or marginalising in relation to an entity's claim to statehood. Moreover, power in itself can be identified in various forms and facets. What forms of power catalyse state formation, and what is the effect of the exercise of power on those aspiring to attain statehood? The role of nationhood in state formation is also addressed, as it can be deemed as a source of legitimacy and thus, power. These issues will be addressed in the context of the case studies of Israel-Palestine, Taiwan, and Kosovo. Palestine and Taiwan both exemplify how difficult it is to attain statehood in the face of an opposition armed with power, while Kosovo illuminates how the role external support (a loan of power) may buoy one's claims to statehood. Consequently, power appears to have a bearing effect on the achievement and definition of statehood.

Keywords: Statehood, nationhood, power, legitimacy.

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List of Abbreviations

BBC	British Broadcasting Corporation
DEI	Declaration on the Establishment of Israel
EU	European Union
ICRC	International Committee of the Red Cross
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social, and Cultural Rights
ICJ	International Court of Justice
ILC	International Law Comission
PNC	Palestinian National Council
PRC	People's Republic of China
P5	Permanent Five (in the UNSC)
ROC	Republic of China (Taiwan)
TRA	Taiwan Relations Act
UN	United Nations
UNCH	United Nations Charter
UNDHR	United Nations Declaration on Human Rights
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
USOP	United States Office in Pristina
WTO	World Trade Organization
WWII	World War II

1   Introduction

As I am writing this text, Israel has entered into its second phase of military attacks against the Occupied Territories. Over a week of aerial bombardment has reaped its toll on the Palestinians. News headlines illuminate glimpses of the effects of these attacks: bleak images of the dead and wounded surrounded by the debris of their livelihoods. On the tenth day of the siege, the death toll reached over 500 people, while the number of wounded was an estimated 2,500[1]. Electricity, water, and healthcare (resources which should be secured as basic human rights) are all scarce commodities in the midst of the turmoil. A BBC reporter and the ICRC describe the situation as a "humanitarian crisis"[2] and so, the situation is grave.

At the epicentre of this conflict is the ever recurring contestation of statehood; a problem which has leached at the stability of the region for decades. This study stresses on the importance of statehood, while showing how it can be marginalised. Palestinians today suffer because they do not belong to a recognised state. Human rights and statehood share a crucial synergy; the prior cannot be realised without the existence of the latter.

This study adopts a multi-disciplinary approach to the idea of statehood and human rights, because, at the heart of the thesis, there is the notion of human rights. Surrounding this, the discourse also incorporates elements of political science, geography, social sciences, sociology, and international relations.

The importance of the existence of the state in order to realise the implementation of human rights cannot be underestimated. Human rights are based on a state- centric approach, because although rights in themselves are individualistic, in order for rights to be realised, one must make a claim on another body: the state and its institutions. A right does not exist without the obligation to realise and implement that right. The obligation to fulfil rights is one of the inherent duties of the state. How then, can the rights of an individual be recognised, respected, and implemented if the individual does not belong to a state?

Thus, the non-recognition of states makes it harder to hold actors accountable for the respect or violation of human rights: "….internationally ostracizing a regime as an outlaw not only means that the entity is deprived of rights under International law, but it also has the undesirable consequence that it cannot be called on to fulfil international obligations and responsibilities…"[3] In this way, the importance of addressing the marginalising factors that deter the recognition of an entity as a state is of great importance.

The abuse of power leads to human rights violations, but what happens when such abuse of power occurs at the international scale? The abuse of power by certain actors leads to some entities not being recognised as states, making it even more difficult for the individuals belonging

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[1] BBC News, Middle East *"Israel Vows No Le- up over Gaza"* from
http://news.bbc.co.uk/2/hi/middle_east/7811301.stm

[2] BBC News, Middle East *"Gaza Humanitarian Crisis Deepens"* from
http://news.bbc.co.uk/2/hi/middle_east/7812295.stm

[3] C. Hillbgruber "The Admission of New States to the International Community", *European Journal of International* vol. 9, no.3, 1998,p: 491-509, 1998)p 494

to such entities to realise their own rights. Indeed, "only a constitutional state in which there is a separation of powers and which guarantees basic rights can fulfil the requirements concerning the protection of human rights under international law"[4]

Thus, one must explore what factors deter the realisation of statehood, as the attainment of statehood is inherently important to the realisation of human rights. The major determinant of statehood (as an obstacle or source of support) in my view is power. Thus, the aim of this study is to examine the role of power in state formation.

1.1   Research Question

The aim of the study will be addressed by answering the main research question: *Is statehood ultimately defined by power?* For ease of analysis and to emphasize the specific issues raised, I am guided by the following sub-questions:
-What is the essence of statehood?
-Does power marginalise all other claims to statehood?
-What is the role of nationhood in state formation?
-Can the realisation of statehood be in the hands of others?

1.2   Delimitations

This study does not address the roots of the conflicts that gave rise to the contestation of statehood. It is my view that the specificities of the history or nature of the conflict do not apply to my main interest, which is the role of power in statehood. The particular conflict of a region does not necessarily define what it is to be a state; although, conflict may be related to state formation, it does not define what it is to be a state.

1.3   Methodology and Material

In order to address the issues and questions raised, I will examine the concepts of statehood and power, and then analyse and problematize the two concepts in turn by drawing my own conclusions from the theories and material that surround the two concepts. The concepts and arguments will be illustrated through the use of case studies, including that of Israel-Palestine, Taiwan (the ROC), and Kosovo. These case studies were chosen because they best illustrate the

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[4] C. Hillbgruber 1998, p501

problematic and politicized nature of statehood. Moreover, each case study depicts different facets of these features of statehood; making the study of more interest.

Crawford's *The Creation of States in International Law* has proven to be the most useful source of the study. The book discusses state formation from a largely legal perspective, adopting a non-biased approach to what constitutes statehood. Nevertheless, a number of secondary sources such as other books, journals, articles and news reports were used. In addition to this, UN Resolutions, material sources of international law (such as treaties, conventions, and court rulings) have proven to be invaluable.

1.4   Theory

Before analysing the concepts at hand, theories surrounding power and statehood will be discussed. Theories on both power and statehood vary according to the theoretical approach adopted. Ultimately, the variation on theories of statehood shows that the concept itself is highly contested; and this in turn is a major argument the study. Firstly, the theories surrounding power will be addressed, followed by a theoretical discourse on statehood.

1.4.1   Theories on Power

Power is a concept that exists in many forms and can be exercised in multiple ways. As Lukes notes, "the concept of power is...what has been called "a heavily contested concept"[5] Many differing view exist in relation to the concept, and thus, this section will present the different theories on power that have been found.

Discussions on power often begin by addressing the three dimensions of it. The first dimension of power, stipulated by Dahl, argues that "...the locus of power is determined by seeing who prevails in cases of decision-making where there is an observable conflict"[6]. Under this approach, the concept of power is closely linked to that of influence. The most influential (i.e. the most powerful) actors will have the most "successful outcomes"[7] in the decision making process; having control of the political agenda and the results of it. Dahl focuses on the location of power and how it is manifested in decision making: "One can conceive that "power" - influence- and "control" are serviceable synonyms- as the capacity of one actor to do something affecting another actor..." [8]

When claims to statehood lead to what Dahl would describe as an "observable conflict", decision making in organizational bodies shows how aspects such as power, influence and control may affect the likelihood of "successful outcomes" for those aspiring to achieve

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[5] S. Lukes, *Power: A Radical View,* Palgrave, Hampshire and New York, 1974 p 26

[6] S. Lukes, 1974 p11

[7] S. Lukes, 1974 p11

[8] S. Lukes, 1974 p13

statehood. In the politics of statehood, those that demonstrate power (or those in control of the "agenda" of statehood) are often found in such decision making bodies (such as the UN), affecting the chances of achieving statehood. Indeed, as Dahl claims, "power is exercised when *A* participates in the making of decisions that affect *B*"[9].

The second dimension of power relates to the elites and their control of the agenda in decision making in order to further their own interest: "All forms of political organisation have a bias in favour of the exploitation of some kinds of conflict and the suppression of others, *because organisation is the mobilisation of bias."* [10]

The idea of power as the mobilisation of bias by the elite is the stipulation of the second dimension of power. Bias, according to the proponents of the two dimensional view on power, can be described as follows:

> a set of predominant values, beliefs, rituals, and institutional procedures("rules of the game") that operate systematically and consistently to the benefit of certain persons and groups at the expense of others. Those who benefit are placed in a preferred position to defend and promote their vested interests. More often that not, the "status quo defenders" are a minority [elite] within the population in question[11].

The politics of statehood is bereft by the influence of bias by certain elites. Such bias may manifest itself in different forms, including as a set of "institutional procedures", such as membership in the UN or the policy of recognition; the "rules of the game" which directly affects the achievement of statehood. Those with "predominant values" and opinions on what it is to be a state will directly affect the outcomes of aspirations to statehood. Certain actors, such as superpowers, are in a position to further their own view on statehood, for example, by the use of vetoing applications for membership in the UN.

The third dimension on power elaborates on the other two: "it incorporates into the analysis of power relations the question of the control over the agenda of politics and of the ways in which potential issues are kept out of the political process"[12]. This view, although on decision making in the political process, nonetheless discusses the "control over the agenda of politics"; something that is reflected in how the elite controls the agenda of statehood.

Other views on power include that of soft and hard power, the prior referring to power as a form of non-coercive influence through ideological means, and the latter referring to power in the form of military action. These forms of power will not be necessarily discussed in the study, although hard power (in the form of military aid to other countries) will be addressed as a form of support for the realisation of statehood. In this way, states often lend their power (hard power) to others in order to help other entities become states.

Macmillan describes power as "the capacity to restructure actual situations"[13]. This view can be exemplified in statehood. Superpowers or members of the UNSC have the power to

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[9] R. Dahl, *Modern Political Analysis*, 5th ed, New Jersey,1984,p16

[10] R. Dahl, 1984,p16

[11] R. Dahl, ,1984,p17

[12] S. Lukes,1974 p21

[13] I. MacMillan, *Strategy Formulation: political concepts*, St Paul, MN, West Publishing, 1978

restructure how one views an entity. The actual situation of these entities is to a large extent determined by the views and decisions of these actors. The *de facto* existence of a state (such as the ROC) may be restructured according to the views of certain superpowers (such as the PRC); leading to the unsettled status of the ROC's *de jure* existence.

The conflict between the PRC and the ROC shows that power may only be secured after deterring the goals of the opposition; and parallel to this Wright Mills describes power "exclusively as a facility for getting what one group, the holders of power, wants by preventing another group, "the outs" from getting what it wants"[14]. The PRC uses its superpower influence and authority in the UNSC to block the opposition in order to secure its own goals. Thus, "influence and authority are forms of power when a conflict of interests is involved"[15].

Bertrand Russell describes power "as the production of intended effects"[16]; and power manifests itself in statehood when the "intended effect" of one body is to block the achievement of statehood for another. For example, the "intended effect" of Israeli and US policy in regards to the Israel-Palestine question is to deter the self determination(and eventual statehood) of the Palestinian people, and this is done, for example, through the use of the veto(on the US's part) on UN resolutions that support the plight of the Palestinians. Power and its many forms are summarised in the following chart (Figure 1).

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[14] S. Lukes, 1974 p28

[15] S. Lukes, 1974 p28

[16] B. Russell, "The Forms of Power" p17 Blackwell Publishers, Oxford, 1994.

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                          Influence


         Unintended                  Intended= Power



   Force          Manipulation          Persuasion   Authority



                              Coercive    Induced        Legitimate
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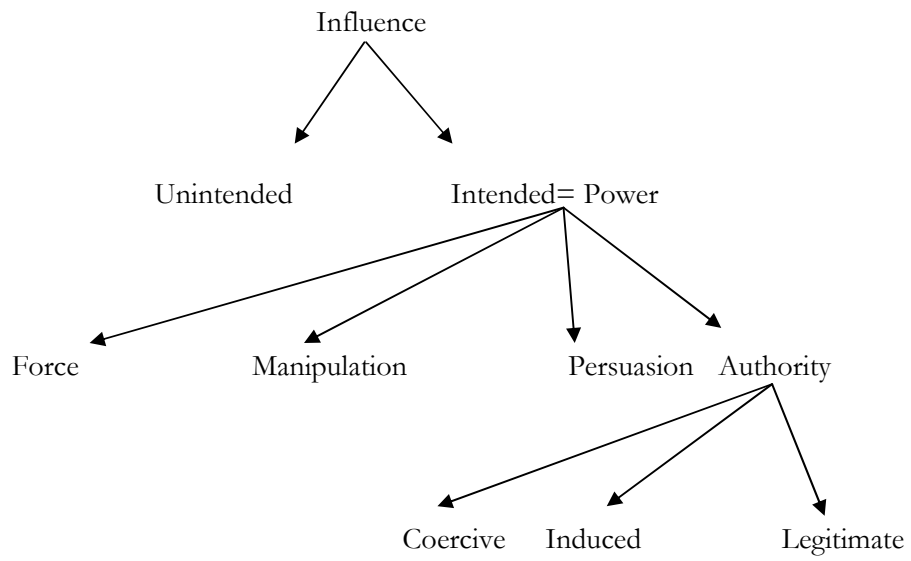
Figure 1: Power and its many forms[17]

[17] D. Wrong, *Power: its forms, bases and uses*, Blackwell Publishers,Oxford, 1979, p 24

It seems then, that politics and power are two concepts that are intimately linked. Indeed, "[to] tell a story about politics is to tell a story of power in society."[18] And thus, "political power is important, because it constitutes the very fabric of politics and of society itself". As statehood is a concept that is easily liable to politics, in order to examine statehood, one must examine power and its influence on the realisation of statehood.

In the politics of international society, what takes precedence: politics, power, legality, or morality? Some (such as the Realist School of international relations) argue that notions such as power does: "the subordination of morality to power often is presented as a descriptive statement of the facts of international political life...The actions of states are determined not by moral principles or legal commitments but by considerations of "interest and power"[19]. How do the actions of others (in the forms of interest and power) affect the constitution of another entity, such as the state? The theories on statehood itself will be now addressed

1.4.2   Theories on Statehood

Reaching any conclusion to the definition of statehood is problematic; as statehood has proven to be a subjective concept. For example, today some countries recognise Kosovo as a state, while others do not. This problem of recognition and non-recognition highlights the subjectivity of the concept. It is argued that statehood is attained after the fulfilment of certain prerequisites or "criteria". Nevertheless, the application of criteria is not without problems: "The multi-criteria nature of concept, the tangled web of historically-specific pathways of state development, and differences in state forms have all contributed to substantial theoretical difficulties in reaching any wide agreement about how to define 'the state'"[20]

What instruments have attempted to define the idea of the state? Max Weber's classic definition remains to be highly influential. His definition claims that a state is an organization which "(successfully) claims a monopoly on the legitimate use of physical force within a given territory". The Montevideo Convention is another source that is often cited as a guide in determining statehood. According to the Convention, a state should harbour a defined territory, a permanent population, and a government (with the capacity to enter into relations with other states). So, is meeting these preconditions enough to be considered as a state, or does being *recognised* as a state define statehood? Malanczuk argues the following:

> "...recognition is one of the most difficult topics in international law. It is a confusing mixture of politics, [and] international law....the legal and political elements cannot be disentangled; when granting or withholding recognition, states are influenced more by

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[18] K. Dowding, *Power,* Open University Press, Buckingham, 1996, p1

[19] J. Donnelly, "Realism "in *Theories of International Relations*, 3rd ed, Palgrave Macmillan, Hampshire, 2005,p48

[20]Dunleavy, Patrick. "The State." *A Companion to Contemporary Political Philosophy*. Blackwell Publishing, 2007. Blackwell Reference Online. 04 January 2009

political than by legal considerations, but their acts do have legal consequences."[21] . Herein, statehood becomes politically charged, and the influence of power may have a definitive effect on an entity's legal status as a state or not.

The constitutive theory on statehood argues that recognition constitutes state existence, that is, an entity is not a state before it is recognised as such. Contrastingly, the declaratory theory argues that a state exists prior to recognition; the state's *de facto* existence is separate from its *de jure* status. Recognition, then, is "merely an acknowledgement of the facts."[22]

Drawing from the theories above, it is my hypothesis that because of the subjective definition of statehood-which is susceptible to wider interpretation-the achievement statehood (and thus, the definition of statehood itself) is easily affected by politics and political interests; and this is how the role of power manifests itself as either a supportive or marginalising factor. Beyond theoretical abstractions, what then, is the true essence of statehood? Is it determined largely by internal qualities and international law, (as some of these theories would suggest) or external factors? An analysis of statehood follows.

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[21] P. Malanczuk, *Akehurst's Modern Introduction to International Law,* 7th ed, Routledge, New York, 2002,p 82

[22] P. Malanczuk, 2002,p 84

2   The Essence of Statehood

In order to fully examine this question, I will examine the legal prerequisites of a state (or to what extent such prerequisites exist), followed by a discussion on legality and legitimacy as the basis for statehood. This section ends by creating a conception of power in relation to statehood.

2.1   Legal Prerequisites of a State

The legal element of statehood (or rather the absence of one), is a problematic feature. Legality and laws involves the explicit codification of norms and concepts in legal documents. Creating such codification for the prerequisites of statehood is difficult, as the notion of statehood is one that escapes objectivity. The history of statehood in UN practice does not show the uniform application of rules, norms or "criteria". Statehood is thus a relatively subjective concept, showing "diversions" from the perceived rules. I say *perceived* norms because these norms are *deemed* as such; these norms are views subject to the *opinio juris* of already recognised states. This is just one of the problems with using legal provisions to identity an *a priori* concept such as statehood. According to certain actors, these norms are perquisites in the sense that these norms have been labelled as "criteria" for statehood. Are these norms indeed *legal* prerequisites, or are they formulated within the extra legal? Can the legal ever define the subjective?

A clear definition of what it is to be a state has not been codified in international law. This is probably due to its highly subjective nature; statehood is ultimately a politically charged and sensitive topic that is subject to bias. In this context, identifying the legal elements of statehood is increasingly difficult.

The Montevideo Convention of 1933 is often cited as the criteria for statehood, and thus the Convention now has a place in customary international law, meaning it has "evolved from the practice or custom of states"[23,] and it is "what states make of it" [24]. Thus, customary international law evolves over time, changing according to the practice of states. This suggests that the prerequisites of statehood in international law are subject to the practice of (already recognised) states, varying according to the opinion of these actors.

The criteria laid down by the Montevideo treaty are not as stringent as they appear to be. The interpretation of these criteria has invariably led to variations in practice. For example, what constitutes as a "defined territory"? Apparently, border disputes and uncertainties in regards to the extent of territory do not necessarily negate statehood. For example, the dispute between India and Pakistan over Kashmir does not affect the statehood of the two territories.[25] Similarly, the criterion of government provides "no specific requirements as to the nature and extent of

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[23] M. Dixon, *Textbook on International Law*, Oxford University Press, New York,2007, p30

[24] M. Dixon, 2007, p31

[25] M. Dixon, 2007, p115

control"[26]. For example, the criterion does not consider governments in exile. Also, the effectiveness of the government does not come into play; failed governments such as that of Somalia do not negate the statehood of the country. The ambiguity of these criteria allow for wider interpretation, leading to variation in how these norms are applied. Thus, the Montevideo Convention acts as a guide, and not a formal source of law [27]

Nevertheless, the most controversial criterion is the last. "Capacity to enter into relations with other states" underlines the importance of the recognition of one entity by other, already recognised states. Inter-state relations are based on the sovereign equality of the states involved. In this context, states only agree to foster relations with other entities when they recognise the formal equality (sovereign equality) of the entity in question; that is, when the recognised state accepts the other entity as a state.

How can an entity be a state, if it is not recognised as sovereignly equal by already recognised states? "It is only by recognition that the new state acquires the status of a sovereign state under international law in its relations with the third states recognizing it as such"[28]. This makes the concept of recognition inherent to the third criterion, and this in turn affects the criteria of statehood.

Since recognition is a political act, it can be easily affected by value judgements and other extra legal conceptions. This is where politics and politically charged interpretations of norms and "criteria" begin to have a pronounced effect on the realisation of statehood. Does recognition, then, override the other criteria for statehood? Ultimately, does the "state create recognition, or recognition creates the state?" [29]

It seems then, that prerequisites to statehood can be found in the extra legal. The ICJ affirms this view, stating the Montevideo Convention is not a source of customary international law[30].As no legal codification defines statehood, the task of determining statehood becomes somewhat subjective, depending on the situational context and the specific circumstances of the case in question.

Consequently, this makes statehood a concept liable to politics, interpretation, and ultimately, power. Moving beyond abstract formulations, international practice shows that in the real world, the law can be easily marginalised by these concepts. Similarly, the prerequisites of statehood can also be made irrelevant in the presence of politics and power. Is statehood based on legality, or the extra legal, or rather, a combination of both?

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[26] J. Crawford, *The Creation of States in International Law,*2nd ed, Oxford University Press,2006 p 59

[27] J. Crawford, ,2006, p 94

[28] C. Hillbgruber p494

[29] J. Crawford, 2006 p 93

[30] Colombian-Peruvian asylum case, Judgement of November 20th, 1950, I.C.J. Reports 1950: 266

2.2 The Basis of State Formation

> "The existence of a state is a question of fact and not of law. The criterion of statehood is not legitimacy but effectiveness"[31]

Does the principle of effectiveness really stand firm under the influence of legitimacy? Do the claims to statehood emanate from legal provisions, or claims of legitimacy based on the extra legal?

After the British handed over the issue of Palestine to the UN (during the year of 1947), the UN GA issued Resolution 181, which was a Partition Plan aimed at the eventual creation of two states-one Jewish, one Arab- in what was the former British Mandate of Palestine: "Independent Arab and Jewish States ... shall come into existence in Palestine two months after the evacuation of the armed forces of the mandatory Power has been completed but in any case not later than 1 October 1948..."[32]

It seems then, that the creation of *both* states is specified within international law. Why then, has the realisation of statehood been attained by only one of the nations mentioned in the Partition Plan? The role of power and legitimacy may have led to divisive outcomes.

The right to self determination by "peoples" emanates from international law (specified in the UNDHR). Conversely, this principle can be used to support claims based on the extra legal; there is nothing in international law that explicitly stipulates a nation's right to a state. This allows for claims emanating from the extra- legal to be supported by the legal. The claims emanating from Zionism (an ideological claim to statehood held by the Jews) were claims of extra-legal nature that were supported by the right to self determination, a provision embedded in law.

Based on these claims of legitimacy, on May 14, 1948, the Jewish nation declared its independence from what was then the British Mandate of Palestine. Israel's independence was contested by surrounding Arab states, resulting in a series of wars, of which Israel emerged victorious. The territorial expanse of Israel breached Resolution 181 by extending beyond the boundaries outlined in the Partition Plan (See Figure 2).

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[31] J. Crawford ,2006, p 3

[32] United Nations General Assembly, Resolution 181, Session I on "The Future Government of Palestine" 29 November 1947

Figure 2: Map showing the territories of proposed Jewish and Arab States, as envisaged in the Partition Plan in relation to existing borders of Israel today[33]

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[33]"Partition Armistice" Retrieved from :http://www.palestineaction.org/images/Partition-Armistice-small.gif on 29 December 2008

Despite this, Israel was met with little opposition in the international community and was soon accepted as a legitimate state. Israel's occupation simultaneously led to the exodus of 700,000 Palestinian Arabs in 1948. As a consequence, Palestinians, a former majority entity in the land of Palestine (Jews constituted 650,000 in population compared to 1,200,000 Arabs[34]) are now facing diaspora; the Palestinian refugee issue is still a lasting problem in the world today. These acts (and the consolidation of the Jewish State) were carried out by Israeli nationalism and supported by the notion of legitimacy that resonates around it.

Since then, Palestine has contested Israel's territorial existence by also stipulating claims to the land. These claims, unlike that of Israel, have fallen on deaf ears. Thus, it seems that Israel's declaration and eventual recognition of statehood was based largely on legitimacy, although such "legitimate" claims were supported by resonances from international law. Conversely, the non-recognition of Palestine is an example of aspirations of statehood being crushed in presence of formidable, external opposition. Thus a discussion on power should follow.

2.3   The Role of Power

"One should try to locate power at the extreme of its exercise, where it is always less legal in character."- Foucault

Power is a complex concept, entailing many definitions found in theory. Nevertheless, the understanding of power in this text is in relation to the legal, or rather, how far it distances itself from it.

Article 2 of the UN Charter states that the organization (and thus recognised states) is based on "the sovereign equality" of all Members. From the legal point of view, this formal sovereignty ensures the formal (and equal) power of all recognised states before international law. Thus, this type of power is within the framework of law and legality. In the context of statehood, where does power in the political sphere actually emanate from? Can it be found in the same "formal sovereign equality of all states"; within the "norm", within the legal? Inequalities in the real word suggest otherwise.

If law is supposed to ensure that the power of all states is indeed equal, why do inequalities in the international sphere arise? Here, power as a decisive factor begins to emerge. The case of Israel and Palestine illustrates this point greatly.

How do Israel and Palestine differ? The prior is recognised as a state, while the latter is not. Both entities have a clearly defined people in the form of a nation, both entities remain in territories under dispute, and both have a form of government (the *effectiveness* of the government is irrelevant in regards to the criteria). The difference lies in the fact that Israel has been

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[34] C. Smith, *Palestine and the Arab-Israeli Conflict,* 5th ed. Bedford/St. Martin's, Boston, 2004,p209

recognised as a state, while Palestine has not. Does power play a role in this difference? It seems like that is the case.

In the case of Israel, power comes from ideology, nationalism, and in the form of support from other states. Ultimately, these forms of power reinforce Israel's perceived legitimacy. All these factors are outside the legal, but act as legitimising factors for statehood nonetheless.

One can see then, that if there are no clearly defined legal prerequisites to statehood, this allows for the use or misuse of extra legal factors in order to attain statehood. Depending on their use, these factors can act as legitimising factors to statehood and its realisation. Power is a double edged sword in this sense, as it can legitimate claims to statehood and also hinder the realisation of statehood for others. Thus, legitimacy may also be a "cover up" for the abuse of power.

It can be discerned that power and legitimacy are two closely linked concepts. In the context of this study, a form of power is the ability to have the extra legal legitimated; it is the ability to move beyond the legal and be confirmed anyway. Conversely, how does power act as a marginalising factor in statehood?

3   Power as a Determinant

One can see how power, when utilised, can affect statehood. But in what specific ways can power deter or marginalise claims to statehood? How are declarations and recognitions of entities as states subject to the influence of power? And finally, in the face of the magnitude of power, can legitimate claims to statehood become a reality? The following sections will examine these issues. One should start with what constitutes as a legitimate claim to statehood, because then one can ascertain how power affects such claims.

3.1   The Legitimacy of the Claim under the Influence of Power

"Statehood is a claim of right"[35]

If statehood is a claim, in order for the claim to be realised as a right, the claim must be legitimate. Indeed, only *legitimate* claims are rights, meaning legitimacy is a prerequisite to the realisation of rights (in this case, the right to statehood). A right is defined as "a justified claim on someone, or some institution, for something which one is owed"[36]. As a consequence, the right to statehood is a right that can only be realised after the fulfilment of certain "criteria", such as the legitimacy (or justification) of the claim made in relation to statehood. What then, constitutes as a legitimate claim to statehood, and in what ways are these claims made?

Firstly, an understanding of the concept of legitimacy must be made. Legitimacy entails justification; for example, one is justified to do something if there is something that supports this action. It is my view that something can be rendered legitimate when it is supported by the law, ideology (such as Zionism in the case of Israel), actors, and eventually, power.

"Power and legitimacy are not antithetical, but complementary."[37] It can be discerned that politics, power, and legitimacy are closely linked: "Politics is not merely a struggle for power but also a contest over legitimacy, a competition in which the conferment or denial, the confirmation or revocation, of legitimacy is an important stake"[38] In regards to statehood, politics and differences in power may have repercussions on legitimacy, an "important stake" for the realisation statehood. Legitimating factors can be found within the legal and extra legal. Where are these factors found in international law regarding statehood?

The right to self-determination is a legitimating factor that resonates around international law. The UNDHR, UNCH, ICCPR, and ICESCR, are all international law documents that were

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[35] J. Crawford, ,2006 p 211

[36] B. Orend, *Human Rights: Concept and Context,* Broadview Ltd, Canada,2002, p17

[37] L.I Claude Jr, "Collective Legitimization as a Political Function of The United Nations" *International Organizations,* vol. 20, issue 3,pps 367-379,p 368

[38] L.I Claude Jr, ,p 368

influenced by or products of this principle. These documents reinforce that the human right of self-determination by "all peoples", can be claimed by everyone; without distinction.

Thus, the right to self-determination poses should pose as a legitimate claim to statehood. The word "peoples" entails a broad spectrum for application. This right should not be context-specific; theoretically, any nation can claim this right. As a result, this right has been claimed by both sides of the Israeli-Palestinian conflict. But it has only been realised by one side of them. Are there other grounds of legitimacy that have made this so?

For an entity to make a claim to statehood there must be a nation, a sovereign government and territory present. The previous chapters in this text show that it may be concluded that Israel and Palestine are more or less equal in these respects. Even if the two entities weren't equal in these respects, the previous chapters make it evident that the so called "criteria" are inherently flexible (for example, Kosovo is deemed as a legitimate state by the US and 52 other countries, even though: (i) it is not a member of the UN, and (ii) the independence of Kosovo is still largely under question as it is under UN and EU control).

Kosovo, even without fully fulfilling the "criteria" to statehood, is closer to achieving statehood than Palestine (having been recognised by a member of the UNSC, while Palestine is far from this sort of recognition). Palestine and Kosovo both have legitimate claims (the right to self determination). But the difference here is this: Kosovo's claim to statehood has been supported by a strong legitimating factor: power, in the form of support from a major actor in international politics; the US. Thus, does this mean that claims to statehood can be made legitimate if they are supported by not just the law and ideology, but also power? Is power the ultimate source of legitimacy?

> ...in the final analysis, the problem of legitimacy has a political dimension that goes beyond its legal and moral aspects...the process of legitimization is ultimately a political phenomenon, a crystallization of judgement that may be influenced but is unlikely to be wholly determined by legal norms and moral principles.[39]

Statehood is a claim that can pose as a justified right if the claim made is supported by certain factors, rendering the claim as legitimate. One can see how the legitimacy of the claim is affected (either bolstered or marginalised) by power. This problem gives rise to the question: can a legitimate claim to statehood be realised without power?

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[39] L.I Claude Jr, p 373

3.2 Declaration/Recognition of Statehood as an Indication of Power

"An entity is not a state because it is recognised; it is recognised because it is a state" [40]

Does this statement really reflect in the politics of the real world? Even though recognition or membership in the UN are not a formal requirements of statehood(for example, the US and 52 other countries now consider Kosovo as a state even though it is not a member of the UN), some argue it is implied in the prerequisite of the "...capacity to enter into relations with other states" [41]. Some (such as the proponents of the constitutive theory) deem recognition as possibly the most important prerequisite to achieving statehood.

If recognition is indeed a political act, then it is liable to the discretion (and influence) of states. Thus, the opinion held of one state may deter the recognition of statehood for another entity. The political act of recognition is inconsistent, states are allowed to recognise one state, and not another: there is no overlying "system" to recognition: "...state practice demonstrates neither acceptance of a duty to recognise, nor a consistent constitutive view of recognition" [42], and, as a result, "while the political relevance of the recognition of new states is beyond all doubt, the rules of law which apply to this aspect of public international law remain uncertain" [43]

In contrast to Israel's recognition after its declaration of independence, when Palestine declared its independence on 15 November 1988, the declaration did not entail the realisation of statehood for Palestine. Nevertheless, following the declaration, Palestine was recognised as a state by 114 recognised states. Additionally, GA Resolution 43/177 "Acknowledges the proclamation of the State of Palestine by the [PNC] on 15 November 1988" [44]. Yet, the undisputed realisation of statehood for Palestine remains elusive. Could it be due to daunting opposition; manifested in the power that Israel (and the US) pose?

Similarly, the ROC is an entity that, although meeting the "criteria" for statehood to a very large extent, has slim chances of ever becoming fully recognised. The ROC has total jurisdiction over its territory, and is "....a distinct and *de facto* independent territorial unit", meaning it is a "long established effective entity" [45]. The ROC is even a member of the WTO, an organization made up of independent states. The ROC also has inter-state relationships with a number of countries, including the US. The TRA outlines the American stance towards the ROC, showing

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[40] J. Crawford,2006 p 93

[41] M. Dixon, 2007, p115

[42] J. Crawford, 2006 p 22

[43] C. Hillbgruber, p491

[44] United Nations General Assembly Resolution 43/177, "Question of Palestine" A/RES/43/177, 15 December 1988

[45] J. Crawford, 2006 p 210

that "...Taiwan is to be treated as a State for the purposes of sovereign immunity... under United States law..."[46]

Furthermore, the ROC was also a member of the UN (and the UNSC) until 1971. Could it be that the status of the ROC changes according to shifts in politics and the use power? "In the period from 1949 to 1970s, the question of Taiwan was bound up with two other issues: the recognition of opposing governments, and the representation on China in the United Nations"[47]. The PRC posed as formidable opposition to the ROC. The PRC strictly adheres to the "One China Policy", meaning that the recognition of the ROC is synonymous with a gross breach with the PRC and its policy.

One cannot forget that the PRC presently holds a seat in the UNSC, meaning it wields a considerable amount of political power, especially in questions regarding the ROC. So, even though the ROC fulfils the prerequisites to statehood, and is treated as such, it is not listed as a state because of the influence (and thus, power) of the PRC in international politics.

The ROC and the rest of the international community can do little in the face of such power, and thus yields, posing no opposition: "[the express recognition of others] of the proposition that Taiwan remains part of China...entails great acquiescence in the continued Chinese claim that the territory is part of metropolitan China..." [48.] It follows that the recognition (or rather non-recognition) of certain entities, such as Palestine and the ROC, are indeed examples of the effects of the exercise of power in international politics.

Could it be that it is not recognition of an entity's independence *per se* that is the issue here, but *who* recognises? After all, some states are more powerful than others and thus, have a more pronounced effect on occurrences in the international sphere. In this way, the issue of who recognises illuminates the role of power in the recognition of states. Is power an influential dynamic that has an effect on if declarations of independence are recognised? That seems to be the case. Declarations of independence are exercises of power in the sense that they show how much power one has (for example, in the form of support).

In turn, the exercise of power has an effect on the chances of a declaration of independence being accepted (recognised) or not. An already recognised state may exercise power in order to deter the recognition of another entity. Thus, the act of non-recognition can be an exercise of power. It follows that declarations of independence are affected both negatively and positively by the input of power. One can see how the exercise of power manifests itself in the declaration and recognition of statehood. In light of all this, what are the chances of claims to statehood being realised without power?

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[46] J. Crawford, 2006 p 205

[47] J. Crawford, 2006 p 210

[48] J. Crawford, 2006 p 212

3.3   Claims to Statehood and the Importance of Power

Can legitimate claims to statehood be realised without power? The examples of Palestine and the ROC indicates that the answer to this question is no. Both entities have a defined people and a government, but for various reasons, have not been recognised as states. This raises a number of questions that should be explored.

Is statehood really based on fact (such as legitimate claims supported by "effectiveness" of the entity, or the existence of a nation in the entity) and *de facto* existence, or are other factors (such as the role of power) highly influential on how claims to statehood are met?

> "According to the proponents of Palestinian Membership in the UN, "Palestinian statehood in the period after 1981 is based on three propositions: First, having regard to the classical "four elements constituent of a State" Palestine, under the provisional government of the PLO, is already a state in international law: "all four characteristics have been satisfied by the newly proclaimed independence of Palestine"[49]

Furthermore, proponents argue that UNGA Resolution 43/177, which "Acknowledged the proclamation of the State of Palestine by the Palestinian National Council on 15 November 1988", suggests a great extent of "international recognition", "such recognition being "constitutive, definitive, and universally determinative"[50].

Moreover, Israel's agreement to the Partition Plan was a "condition for its admission" to the UN, meaning the Plan still stands today, and as a result, it should be affirmed, and is a basis for Palestinian statehood. Under this context, Palestinian aspirations to statehood can be(to a considerable extent) deemed legitimate. Why then, does statehood for Palestinians remain elusive?

It may be because that effectiveness or legitimacy is not the ultimate determinant of statehood, but power, in various forms. Political power, military power, and power in the form of support, all have a great effect on statehood, posing as either helpful or harmful to its realisation. Another possible source of power- that of nationhood- is discussed in the following section.

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[49] J. Crawford, p 436

[50] J. Crawford, p 436

4 The Role of Nationhood in State Formation

Nations are mobilising agents, and as a result they often catalyses state formation. Recognised states are based on nations, but can nations also act as a source of power in the acquisition of statehood? Thus, in order to address the role of nationhood in state formation, one should address not only nationhood but the concepts that are inherent to it: that is self-determination and how it relates to statehood. These concepts, it seems, do have certain relationships to power, and these links will be outlined in the following sections.

4.1 Nationhood and Self-determination

Does recognised nationhood constitute as a right to self-determination? In order to explore this question, an understanding of nationhood must first be made.

The idea of nationhood is one that has not been defined specifically in international law. This is perhaps due to the inherent flexibility of the concept of the nation in the first place. This is because the conception of nationhood is multifaceted and loosely defined; nations are "self defined", meaning its perception and existence depends on what people make of it. "National identity involves some sense of political community, however tenuous"[51,] and this allows for loosely defined bonds to be created, marked by affiliation to any number of qualities.

Thus, nations are essentially "a self-constituted "natural" category, a group of people who "naturally form a unit with a common past, present and, often explicitly, future; a group of people who share things...that mark them off from other groups..." [52] Nations are often (if not, primarily) based on a "fairy well demarcated and bounded territory, with which members identity and to which they feel they belong."[53]

"A fairly well demarcated and bounded territory" suggests that there is a link between established nationhood and a nation's claim to territory (and thus, statehood). Some even go as far to suggest that nationhood and statehood are almost interchangeable; the two concepts are mutually supportive: "...the claim or aspiration to statehood is constitutive of the notion of a nation. In order to be a nation you have to want to become a state"[54] As a result, one must investigate the links between nationhood, self determination, and statehood.

Nations and politics share a symbiotic relationship: "...the nation was actively constructed in a drawn-out process of socio-political consolidation; and like the state, the nation is primarily a

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[51] A. Smith, *National Identity,* Penguin Group, London, 1991, p 9

[52] I Walker, "What Came First, the Nation or the State?" *Africa* ,vol 6 issue 12, p584

[53] A. Smith, 1991, p 9

[54] A. Liebich 'Must Nations Become States?', *Nationalities Papers*,31:4,453 — 469,2003, p 455

political unit"[55]. The loosely defined nature of nationhood makes the concept easily susceptible to politics. As a result, "...what we mean by national identity comprises both a cultural and political identity and is located in a political community as well as a cultural one... [thus,] any attempt to forge a national identity is also a political action with political consequences..."[56]. These political consequences may involve the re-drawing of maps and the formation of new states. The political nature of nationhood means that when nationhood itself is politicized, it may have profound effects on statehood and its realisation.

International law does not define nationhood, politics and people do. Contrastingly, self determination is a right specified in international law. Here, one can see that law and politics start to mix, resulting in different outcomes to the realisation of this right. How then, can an entity not defined by international law make a claim for a right which is incorporated in law? Is the achievement of self determination and statehood the "natural state" [57] of peoples with independent national identities? The DEI suggests the answer to this question is yes: "...the right of the Jewish people to establish their state is irrevocable. This right is the *natural*[58] right of the Jewish people to be masters of their own fate, like all other nations, in their own sovereign states"[59]

In international law, the right to self determination is one that is to be enjoyed by "all peoples", and this wide spectrum of application can be said to include nations. Nevertheless, there is no provision in international law that stipulates a *nation's* right to self determination: this task is rendered as highly difficult because the very notion of nationhood is one that lies within the extra-legal; it has yet to be defined by legal codification. As one can see, this is probably due to the inherent flexibility of the idea of nationhood itself. The loose conception of nationhood is problematic to realisation of statehood

Despite this, it seems that nationhood has posed as a claim to the right to self determination in a number of cases. The creation of the Israeli state was based on strong ideas of nationalism and Zionism, an ideology which argued for the "creation of a Jewish homeland". It seems that ideology can be used to enable the creation of states based on the claims launched by a nation.

Consequently, the very existence of Jewish nationhood entailed a right to self determination and eventual statehood. The claims to this right are found in the extra-legal, emanating from idea of political and moral legitimacy. Could political and moral legitimacy be sources of power in a nation's quest to statehood? This would explain the difference in the outcomes of the aspirations of the Israelis and Palestinians. For, it seems, in the case of the Palestinians, the existence of nationhood does not entail a right to self determination. In this context, is nationhood also another legitimizing factor, another source of power, for a sole side of the on-going conflict?

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[55] I Walker, p584

[56] A. Smith, 1991, p 99

[57] R. Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness,* Columbia University Press, New York, 1997, p200

[58] My emphasis

[59] C. Smith, 2004, p215

4.2   Nationhood as a Source of Power

A recognised nation can pose as a source of power if the existence of the nation in question reinforces moral and political legitimacy. Israeli claims to the territory in what was formerly the Palestinian Mandate was deeply rooted in ideology; an ideology that was catalysed by the political dynamics of the time.

As a nation is essentially a "political unit", it may be liable to the fostering of special interests. Zionism, an ideology that acted as the basis for claims to what is Israel today, was thus a political movement, aimed at the eventual creation of a homeland for the Jewish people: the "Promised Land" for the "Chosen People"; wherein true self determination for all Jews would be finally achieved. The Basel Program of 1897 outlined Zionism and its cause: "the aim Zionism is to create for the Jewish people a homeland[homestead] in Palestine secured by public international law.[This would be achieved by]...[among other methods] the strengthening of Jewish national feeling and consciousness"[60]. In this way, even the pioneers of Zionism were well aware of nationalism as a source of power.

As a result, legitimacy was also reinforced by theocratic aspects; the role of religion cannot be underestimated as a legitimizing factor in Israeli state creation. Devout believers of religious doctrine often view its teachings as indisputable and irrefutable, and so, claims to the land would be hard to relinquish by those who follow these religious prescriptions.

Political developments such as the Holocaust only heightened the need for the establishment of a Jewish homeland. In fact, the very Declaration of Israel reminds us of the causal effect the Holocaust had in the state's creation:

> "The catastrophe which recently befell the Jewish people-the massacre of millions of Jews in Europe-was another clear demonstration of the urgency of solving the problem of its homelessness by re-establishing in Eretz-Israel[61] the Jewish state, which would open the gates of the homeland wide to every Jew and confer upon the Jewish people the status of a fully- privileged member of the comity of nations"[62]

The Holocaust also increased the general amount of sympathy for Jews worldwide; meaning it would be difficult to argue against the legitimacy of the creation of a final Jewish homeland; a land of solitude for a people that had been persecuted for centuries. During the late 1940s, this persecution had reached brutal, inhumane heights, and thus, international sympathy for Jewish people grew, while simultaneously, the window of Jewish sympathy for the rest of the world had closed slightly. In this light, it would be difficult to argue against staunch Israeli claims to a disputed territory.

Zionism is an ideology that calls for the creation of a homeland (state) for the Jewish people (nation). According to the Jewish people, Zionism poses as a *legitimate* claim to the formation of a

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[60] C. Smith ,p53

[61]The ancient land of Israel, Palestine

[62] C. Smith, p214

state. The claim is based on moral and religious factors inherent to the Zionist ideology. Zionism was bolstered by not only moral legitimacy; the political climate at the time also bolstered its perceived legitimacy.

Nevertheless, the establishment of a Jewish homeland would dispose the sizeable Arab population already living in what was then called Palestine: "since the early days of the Zionist movement, Palestinian intellectuals and political figures perceived that Zionism had objectives that could only be achieved at the expense of Palestinian aspirations..."[63]

Are the aspirations of the Palestinians rendered as irrelevant; next to its opposition, who are armed with a strong nationhood buoyed by moral and political legitimacy? Palestinian nationhood, in contrast, has not served as a reservoir of power, leading to unfulfilled dreams of statehood:

> "...like many other unfulfilled, "unsuccessful" national identities, that of the Palestinians has been fashioned without the benefit of the powerful machinery of the nation state to propagate it....the Palestinians have asserted their identity without the trappings of an independent state and against powerful countervailing currents"[64]

In contrast to this, the Jewish people, bolstered with legitimizing factors and sources of power that emanate from nationhood; claimed their right to self-determination and ultimately attained statehood. But does self-determination in itself have a causal relationship with the realisation of statehood?

4.3   Self-determination and Statehood

International law recognises the fundamental right to self-determination in numerous international conventions, and it is often linked to the achievement of statehood. Does self-determination lose all its meaning if there is no territory to realise its exercise? The answers to this issue may run parallel to the importance of statehood. As a consequence, should self-determination come packaged with statehood?

The *right* to self-determination is one that permeates through international law: "self-determination made its way into codified international standards and is nowadays part of positive law"[65]. Additionally, self-determination, a notion rooted in political and moral conceptions, entails a broad spectrum of application:"The actual transformation from a political and moral principle into a legal right has hardened its meaning but has also conferred upon it a universal dimension"[66].

If self-determination "... as a principle refers to the moral right of a community to conduct its own affairs in a way they see fit", how can one be truly be self-determining, exuding the features mentioned above, without existing as a state? This conundrum is problematic; it suggests that the right to self-determination *should be* synonymous to the right to statehood, although, at

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[63] R. Khalidi, 1997, p24

[64] R. Khalidi, 1997, p94

[65] A. Preda "The Principle of Self Determination and National Minorities" *Dialectical Anthropology 27: 205-226,* 2003p 206

[66] A. Preda*,* 2003, p 206

the present, it isn't, as no such right to statehood exists. Statehood is the ultimate way in which effective, true self-determination can be achieved and exercised. Aspirations of self-determination can be a shared bond: shared bonds which eventually give rise to the creation nations. In turn, nations are eventually consolidated by territorial demarcations, that is, the creation of a state.

Consequently, self-determination is only relevant to nations; another entity that only has meaning to its occupants if they inhabit a state: "Though resisted by many jurists and other scholars, the thesis that nationhood, understood in a cultural sense, must-both in the sense of "should" and in the sense of "will necessarily"-entail political statehood continues to advance public consciousness"[67]. The concepts of "nation" and "state" share an intricate synergy; there are two sides of the same coin: "A state is the formal, organizational side of this coin; a "nation" is its human side. States are institutions; nations are collectives. The former have an objective character; the latter have a subjective one"[68]

There are no legal rights to statehood that exist within international law. Thus, claims to statehood are largely based on the extra-legal. This means that the politics that surround statehood-power and legitimacy for one- have a pronounced role in claims to statehood. "Rights" to statehood then, are based on these extra legal factors.

A primary function of law is to ensure equal opportunities to the realisation of rights. In this case, the absence of a *legal* right to statehood enhances inequalities; making it possible for the powerful to have their way, and in the meantime, the powerless are left behind. In this way, self-determination (in its ultimate form, that is, as an exercise of statehood) can actually be experienced by some, but not by all, due to the role of power. The fact that self-determination does not necessarily entail a legal right to statehood enhances unequal opportunities, and thus, the role of power becomes more pronounced and marginalising.

In the politics of statehood, power also emanates from external actors. The role external actors cannot be underestimated; and thus, a section exploring the ways in which such actors affects the acquisition of statehood follows.

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[67] A. Liebich, 2003,p 448

[68] A. Liebich, 2003,p 454

5   The Role of External Actors

Is the essence of statehood truly due to internal features or do external actors have a profound effect on statehood? This section will address this issue by exploring the ways in which external actors define statehood, and how their exercise of power may have a pronounced effect on outcomes for entities aspiring to statehood.

5.1   Identifying the Gate-keepers of Statehood

Recognised states decide if the "criteria" to statehood has been fulfilled or not, and because there are no legal prerequisites of statehood, statehood is something that is determined by the opinion of states: "The very personality of a state depends on the political decision of other states" [69] Thus, "the matter of deciding the criteria for statehood within the discretion of existing recognised states"[70] is a matter of who defines statehood, and ultimately, who wields the power to enable its realisation.

     Thus, it follows that having all the "ingredients" to statehood- a nation, government, and territory- in some cases (such as those of the ROC and Palestine) - means little if another state does not recognise an entity as such. Is the attainment of statehood really about a claim to a right, or is it more of an ascribed privilege, a ticket enabling access to "the club"?

     The ROC, for example, is an entity that has to a large extent, satisfied the prerequisites to statehood. Nevertheless, it is being denied statehood because the PRC, its opponent on the issue, has "defined" the ROC as a non-state. Thus, statehood can be ultimately defined by external interests instead of internal qualities.

     Although nations are self defined, it seems that states are the opposite. Claims to statehood are rendered as legitimate or illegitimate, depending on the international response received. Certain actors have a pronounced role in determining the legitimacy of a claim. This particular facet of statehood stresses the importance of support from other, powerful states in an entity's quest to statehood. How can support (or its absence) from such "gate-keepers" affect or marginalise claims to statehood?

5.2   The Heightened Role of Support

The idea of external support is implied in the final criterion of statehood, that is, "a government; and capacity to enter into relations with other states". This criterion has been translated into the prerequisite of recognition, and recognition is a form of support. Support from certain actors may have a definitive effect on the chances of the realisation of statehood. In a world directed by

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[69] I. Brownlie, *Principles of Public International Law,*7th ed, Oxford University Press, New York, p88

[70] J. Crawford, 2006 p 86

politics and special interests, what then, are the prospects of being recognised as a state without support from others?

Support can take various forms, ranging from the physical (military) to the political. Likewise, there are different sources of support. Power blocs and regional bodies such as the UN, EU, and other regional organizations are sources of support for numerous states. Additionally, superpowers may also lend their power to others. These actions of support can act as legitimizing factors of the statehood.

For example, the UN's recognition and eventual admission of Israel as a Member was form of support (collective legitimization) which reinforced Israeli statehood; strengthening Israel in the face of opposition: "The prompt admission of Israel to the United Nations was clearly regarded, by both friends and foes of the new state, as a major contribution to the capacity to survive in a hostile neighborhood."[71]

Thus, the support from organizational and regional blocs, such as the UN, can have a strong and positive effect on the realisation of statehood. The EU, for example, is another bloc that has loaned strong support towards Kosovo's plight of independence and statehood. Similarly, super support may also act as a contributing factor to statehood. For example, the US continuously lends power to Israel. Israeli interests, including interests regarding its preservation of statehood, are maintained in by the American policy in the UN and its actions (such as the use of the veto to further Israeli interests) in the UNSC.

Similarly, the independence of Kosovo was a declaration that is perhaps close to the realisation of statehood, due to external support from the US; Kosovo (as of July 2008) was made a member of the IMF and World Bank, organizations which are based on sovereign states. Kosovo is an entity which now enjoys an elevated international status, due to the support it has received.

The US loaned military forces and aircraft to Kosovo during its war with Yugoslavia (the US presently continues to contribute to Kosovo's military force). The bilateral relations between the two countries existed prior to Kosovo's independence; the USOP essentially acted as an Embassy, although it was not labelled as such. It would seem then, that strong support from a major superpower such as the US would only increase Kosovo's confidence and its possibility of eventual statehood.

One can see how support from a formidable superpower may pose as a legitimizing factor for statehood. As the importance of support from others is increased, the possibility of achieving statehood without support is a dim prospect. On the flip-side, non- support in its extreme form- blocking- can also be of great importance for the prospects of achieving statehood. Such blocking is a result of certain actors and their abuse of power. How then, does the abuse of power affect statehood?

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[71] L.I Claude Jr, p 376

5.3   Blocking as a Form of Marginalisation

Although membership in the UN is not a formal prerequisite to statehood, already recognised states deem it as an important indicator of the fulfilment of the criteria to statehood:

> "The endorsement by the Security Council is definitely not a necessary condition for statehood, since the Security Council does not constitute any sort of international civil authority that certifies the birth of new states. By the same token, the absence of membership of the United Nations does not, as such, preclude statehood, although membership of the United Nations is usually an indication of the statehood of an entity[72].

As a result, modern day developments have heightened the importance of UN Membership as a characteristic of states. Because of this, "collective legitimization has emerged as one of [the UN's] major political functions"[73], and "the current fashion of legitimization of the status and behaviour of states in the international arena emphasizes the *collective* and the *political* aspects of the process"[74]

Thus, legitimization is heavily influenced by the views of political bodies such as the UN. This is problematic for the realisation of statehood, because the UN is a body that is easily affected by political power. The politics of the post WWII world gave birth to the UN, resulting in the P5's designation as members of the UNSC. The politics of today sustains the power and thus, the interests, of the P5. Politics resonates around the very existence of the UN and collective recognition: "Collective recognition has developed, for better or for worse, as essentially a political function, sought for political reasons, exercised by political organs through the operation of a political process, and productive of political results" [75]

Claims to statehood are subject to the response of these "gate-keepers"; those that ascertain if an entity is in fact a state or not. As can be seen, recognition or non recognition *per se* is not really what matters, but rather, *who* recognises or not. Thus, the power (or abuse of power) of certain actors (such as those in the P5) may have a substantial effect on the realisation of statehood. What are the dynamics here that lead to this? Article 4(1) of the UNCH states the following:

> Membership in the United States is open to all other peace-loving states which accept the obligations contained in the present Charter and, *in the judgement of the Organization,* are able and willing to carry out these obligations

The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council

The statement "*...in the judgement of the Organization"* reinforces the UN's role as "gatekeepers" when entities launch their claims. Only states could be "able and willing to carry out the

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[72]J.D' Aspremont "Regulating Statehood: The Kosovo Status Settlement" *Leiden Journal of International Law* vol 3, issue 20 (2007) p 649-668, p657

[73] L.I Claude Jr,, p 376

[74] L.I Claude Jr, ,p 370

[75] L.I Claude Jr,,p 371

obligations" enumerated in Article 4(1). Thus, the UN is in effect, judging the extent to which applicants are states or not:

> Article 4(1) of the UN Charter explicitly mentions the ability and willingness 'in the judgement of the Organization' to carry out international obligations as a criterion for admission of new members to the United Nations, and by doing so merely stipulates what constitutes statehood In accordance with international law"[76]

One can see how membership is subject to "the recommendation of the Security Council", i.e., the veto.

Figure 3 indicates how a sizeable amount of UN resolutions in relation to Israel-Palestine are reflected in the UNGA and the UNSC. A considerable amount of these resolutions are critical towards Israel, or specify the "inalienable rights of the Palestinian people", including that of self-determination. One can see how the overwhelming amounts of resolutions regarding the region are made in the GA. This is an interesting note, because the UNSC is the only UN body that can make binding resolutions. Could it be that there is an interest in keeping resolutions that may aid Palestinian statehood at bay, away from the likelihood of becoming binding? Do certain members of the UNSC have a role to play in reinforcing Israeli interests, interests which in this context, marginalise Palestinian claims to statehood? This is where the role of the veto (and the abuse of its use), a privilege wielded by the P5, comes into light.

A sizeable amount of vetoes issued in the history of the UN have been related to membership. Vetoes are used to block applications for membership, often mirroring the political climate of the time. Thus, membership (and legal status of entities) can be subject to the specific politics and the perceived balance of power of a certain period in time.

Figure 4 indicates that more than half of the vetoes issued by the US are related to the Israeli- Palestinian conflict. Some of these vetoes include topics such as "Question of the exercise by the Palestinian people of their inalienable rights", or "requests a report on the living conditions of Palestinians in occupied Arab territories"[77]. The US veto of the resolution "on the killing by Israeli forces of several UN employees and the destruction of the WFP warehouse"[78] shows the extent of US support to Israel: it is unflinching. Such support has been in exercised the birth of the Jewish State, and thus the US has maintained it throughout its history with Israel:

> "Since 1948...has support[ed] Israel but never conced[ed] the validity of Palestinian national rights or self determination and statehood that their implementation would entail, and indeed frequently making efforts to prevent their implementation."[79]

In this way, protecting the interests of others (such as the US's preservation of Israeli interests in the UN) may deter another entity's possibility of statehood. This "support" is carried out by the exercise of power, or rather, the abuse of power, exemplified in the US's overuse of the veto in relation to blocking Palestinian statehood.

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[76] C. Hillbgruber 1998, p 499

[77] "Power of the Veto", Global Policy Forum, retrieved from
http://www.globalpolicy.org/security/membership/veto.htm

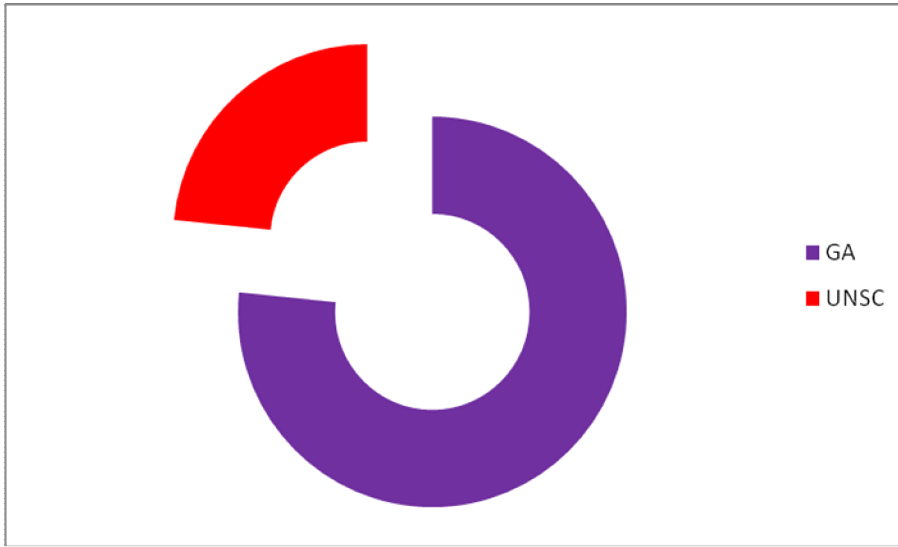[78] "Power of the Veto", Global Policy Forum

[79] R. Khalidi, 1997, p2

Figure 3: Resolutions regarding Israel -Palestine: the UNSC compared to the UN GA (1967-1989)

Figure 4: US resolutions regarding Israel-Palestine (as a proportion of total US resolutions)

6 Conclusion

Is statehood then, ultimately defined by various forms of power? As no legal codification to statehood exists, this allows for the most powerful to create the "rules of the game", while others are left behind. Statehood becomes something that is based on nuances of legality and legitimacy, allowing for the role of special interests and politics.

The role of external actors shows how power (its absence or input) can ultimately define the constitution of statehood. Today, Kosovo is much closer to statehood than Palestine ever has been, and the difference between this two is their access to power and legitimization.

The case study of Palestine exemplifies the highly politicized nature of statehood, and how power can act as staunch opposition; overriding other internal qualities. The case study of Israel is interesting, because it illuminates the many faces of power: support, the blocking of oppositional interest, ideology, legitimacy, nationhood, morality, and even international sympathy. The case study of Israel also points to one of the major points of the text: that power can exist in many forms, and when utilised it can bolster some and marginalise others, leading to the violation of individual rights.

In these ways, the analysis of this study shows how power may have a pronounced effect on the ability of an entity to be recognised as a state. It seems that power manifests itself in many different forms in the politics of statehood, and its role and (mis)use cannot be underestimated. Through this, one can ascertain how power indeed overrides many others constitutive of statehood, thus acting as the ultimate determinant of the status of an entity.

6.1 Discussion

In this section, I will address possible solutions for the problematic nature of statehood and the obstacles that face the implementation of the solutions. Secondly, I will discuss possible issues for further study. Lastly, I will discuss problems met while researching for the study.

Composing some sort of legal codification for the premises of statehood would limit the subjectivity of statehood(ensuring equal opportunities to its realisation) and thus be of help, but the ILC has already attempted this and failed, and understandably so. Attempting to do this would entail reaching some kind of consensus within the international community of existing states, which is difficult to achieve on any issue, due to politics and special interests. Furthermore, certain states (especially those in powerful positions) might want to maintain the blocking of statehood for other entities, and thus, it would be in their interest to create even more problematic prerequisites to statehood.

In addition, in today's world, what it means to be a state is constantly changing. Some say the respect of the human rights of the people inhabiting the territory should also be a condition to legitimate statehood. In such a changing world, reaching any consensus is made even more

difficult; some states deem this as a prerequisite to statehood while others do not.

A final conundrum: should there be any prerequisites to statehood at all? Doesn't every individual deserve the right to a permanent residence, or the right to access to basic human rights? Such rights can only be ensured within the institutions of a state. How can preconditions be placed on an individual's access to such fundamental resources? The immorality of this is another problematic feature of the idea of placing preconditions that must be fulfilled in order to be recognised as a state.

Access to power then, not only defines statehood; it defines the quality of life for human beings. Thus, a possible area of further study could examine why such prerequisites exist, if the existence of them can be so detrimental for some individuals. What are the purposes of having criteria for statehood? Do the prerequisites actually exist (as some would argue) to deter the establishment of ineffective states?

Like the idea of statehood, theories on power are subject to the differing views on the subject. This is because the concept of power itself is elusive and expansive; conceptions of power exist in not only the social sciences, but behavioural sciences, political science, as well as international relations theory. This made it difficult to find sources that specified my approach to the concept; I had problems identifying theories on power *in relation to* the study, because I am more interested in how power manifests itself in state formation and the politics of statehood.

Most of the theories found were within social/behavioural science or political science (relating to governance), so as a result, when applied to the context of my research, these theories therefore had limitations. Yet, although some of theories on power (such as Dahl's and the two dimensional view on power) are centred on decision making in government (a limitation) they are still relevant to the study.

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